

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
AIR PROGRAM REVIEW

FINAL REPORT
JANUARY 17, 2003

Conducted by the
U.S. Environmental Protection Agency
Region 7
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Chapter I
EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Introduction

The Region 7 Environmental Protection Agency (EPA) conducted a program review of the Kansas Department of Health and Environment's (KDHE) Air Program in June 2002. The following areas were reviewed: emission inventories, compliance and enforcement, modeling, national emission standard for hazardous air pollutants (NESHAP) asbestos, planning and development, new source performance standards (NSPS)/NESHAP/maximum available control technology (MACT) programs, State Implementation Plan (SIP)/111(d) programs, and the monitoring program. This review was initiated by EPA sending an advance list of questions to KDHE for responses.

Planning

This section of the review includes the following:

Regulatory Development - The responsibility for rule development and SIP submissions rests in the Administration Unit and is accomplished by one person. The air program recently developed a comprehensive manual for rule development which has greatly improved rule development and submission; however, internal review is sometimes delayed.

Recommendations: EPA recommends that dates be used on the internal tracking form to identify where and when rules are delayed. Permit engineers and field inspectors should be included in the internal review process (where applicable) to provide for easier implementation of the rules after adoption.

Emissions Inventory (EI) - Overall, the EI section of KDHE appears to be doing an excellent job, given their limited amount of resources. They have thus far responded in a timely fashion on all EI-related issues and are effective in communicating with their regional partners. Kansas has continued to fulfill their commitment to the Regional Planning Organization process while playing an active role in the EI group. With the completion and proper implementation of the EI Quality Assurance Project Plan (QAPP), the 2002 inventory should provide the state with a solid baseline inventory to begin the PM_{2.5}/RH SIP process.

Recommendations: EPA recommends organization of the Emission Inventory Questionnaire (EIQ) forms. KDHE is also encouraged to inquire about training as needed.

Contract Analysis - The four contracts administered through KDHE were found to be acceptable.

Recommendations: No recommendations are noted at this time.

Grants and Work Plan Development - For this portion of the Program Review, the Director of the Bureau of Air and Radiation and the grants representative were interviewed. KDHE is meeting all Federal requirements for the grant workplan process.

Recommendations: No recommendations are noted at this time.

Training - Training is provided based on availability through annual meetings, workshops and satellite downlinks—which KDHE asked to be reinstated. A list of training funded by section 105 funding is provided to EPA at the end of the fiscal year by the KDHE training officer.

Recommendations: No recommendations are noted at this time.

Modeling - The modeling review consisted of interviews with modeling personnel and review of prevention of significant deterioration (PSD) applications. KDHE has made significant improvements in the area of regional modeling in the past several years. The hardware and software resources are now available and the expertise of KDHE personnel has greatly improved. In addition, Kansas has played an invaluable role in the Central Regional Air Planning Association (CENRAP) modeling workgroup and the Kansas City Ozone Modeling Study.

Recommendations: KDHE should review the procedure in which increment analyses are conducted; maximum allowed emissions or Federally enforceable permit limits should be used in the modeling for all hours; the visibility analyses for Additional Impact Analysis should include locations closer to the source. In addition, the anemometer height for the Kansas City International Airport needs to be corrected.

Small Business Assistance Program - In the State of Kansas, the Small Business Environmental Assistance Program (SBEAP) includes the Ombudsman, the Compliance Advisory Panel (CAP), and the technical assistance staff. The technical assistance portion of the SBEAP is contracted with the Kansas State University's (KSU) Pollution Prevention Institute which provides information through telephone inquiries, web site, on-site assessments, workshops, seminars, brochures, manuals and a quarterly newsletter. The KDHE/KSU workplan and contract are renewed on an annual basis. The SBEAP is a very effective, efficient program.

Recommendations: No recommendations are noted at this time.

Permitting

During this program review, EPA Region 7 performed an evaluation of the air permitting programs of the Unified Government of Wyandotte County—Department of Air Quality (DAQ) in Kansas City, Kansas. Region 7 had conducted a review of the Kansas state air permitting programs at KDHE in 1999; therefore, the decision was made to concentrate the 2002 review on the DAQ permitting program. DAQ has their own permitting program, but all DAQ permits are reviewed and approved by the state before final issuance.

The scope of the review focused on synthetic minor permitting; NSPS, NESHAPS and MACT determinations; establishment of enforceable permit conditions; and the interaction between the Title V and new source review (NSR) programs. Specific source permits were reviewed to identify any instances or patterns of questionable permitting practices.

The DAQ runs a very competent permitting program. The staff which exists of six positions was competent, helpful and knowledgeable about the air programs and makes conservative decisions with no use of private consulting firms. In general, the files were well organized, labeled well, and were very comprehensive. The construction permits and approvals all have good descriptions of the emission units that are being approved, procedures are in place to incorporate construction permits into Title V operating permits, and the use of custom-made forms and other forms were excellent. As with any review, there is always room for improvement.

Recommendations: Areas which need improvement are detailed in the Permitting Section of this report and are as follows: lack of evidence that the source or department completed an ambient air quality analysis for individual projects; a policy is needed with regard to the use or acceptability of AP-42 emission factors; permit records were generally silent on the source potential to emit; “as built” projects need to be appropriately addressed; some permits did not contain the elements of an enforceable permit; and notice of environmental justice considerations or prior public involvement needs to be included in the future permits.

Compliance and Enforcement

The purpose of the Enforcement portion of the review was to ensure that violations are being identified by KDHE, to ensure that high priority violators (HPV) are being reported to EPA Region 7, and to ensure that timely and appropriate enforcement actions are taken on the violations. The review also included an overall assessment of the air enforcement program.

The department is commended on file organization and for the source specific and NSPS inspection checklists that have been developed for certain subparts. In addition, complaints are handled in a timely manner and documentation was detailed and precise.

Recommendations: Issues that need improvement include possible violations that meet the HPV criteria that were not designated, failure to document and include in the files any follow-up actions that were taken, and Title V certification forms not reflecting part 70 requirements. This report includes source-specific findings from seven facilities.

One additional comment/recommendation is that KDHE needs to report stack test results through I-Steps into the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS) data base. These criteria were outlined in the April 25, 2001, Compliance Monitoring Strategy.

Asbestos

The Bureau of Air Quality and Radiation of KDHE implements a fully delegated Asbestos NESHAP program pursuant to 40 C.F.R. Part 61, Subpart M. The program is responsible for notifications, inspections, enforcement case development, outreach, and data management. Given the limited resources devoted to the program, the level of effort is commendable. KDHE exercises common sense and good judgement in prioritizing inspections and pursuing enforcement actions. The enforcement files are well organized, and include adequate documentation to support enforcement actions. KDHE also implements an asbestos licensing program for workers and contractors/supervisors.

Recommendations: EPA recommends that a memo be included in the enforcement files which documents the calculation and basis for the assessed penalty.

Air Toxics

The purpose of this review was to assess the adequacy of the implementation of the Air Toxics Programs in the State of Kansas. As with the other areas of review, a list of questions was provided and promptly answered by the KDHE staff. The on-site portion of the review included interviewing KDHE personnel and reviewing files—which were requested in advance of the on-site visit. The Review addressed inspections and follow-up in the data tracking system. Overall, the KDHE program is tracking and inspecting for compliance for most of the MACT sources in the State of Kansas.

Recommendations: Inspection reports should be evaluated for the local agencies to ensure they are meeting a standard that allows the reviewer to determine which parameters were checked. In addition, the MACT standard for dry cleaners should be revised.

Monitoring

A technical system audit of all ambient air monitoring agencies reporting data through KDHE to AIRS is currently underway in the State. These assessments are performed independent of the Regional program review on a mandatory three-year cycle required by 40 C.F.R. Part 58, Appendix A. The mandatory three-year cycle for air monitoring agency technical system audits is more frequent than that required by our Regional Program Review Protocol.

Completed technical system audit questionnaires have been received from KDHE's Bureau of Air Quality and Radiation; the Unified Government of Wyandotte County-Kansas City, Kansas, Health Department; and Wichita-Sedgwick County Department of Community Health.

The completed questionnaires are currently under review, and planning is underway for on site evaluation of representative ambient air monitoring locations and administrative records review. The final report from this assessment is scheduled for completion by the Environmental Services Division/Environmental Monitoring and Water Compliance in January 2003.

Title V Fee Review

The purpose of the Title V Fee Review was to assure that KDHE was collecting adequate fees and accounting for the direct and indirect costs associated with Title V and Non-Title V activities.

Prior to the review, KDHE completed a questionnaire with regard to Title V fee revenue, expenditures and the accounting system. During the review, some follow-up was required to clarify some of the answers given on the questionnaire. The overall finding is that KDHE is collecting sufficient fees and accounting for the costs associated with administrating the Title V Program in conjunction with Non-Title V activities.

Recommendations: No recommendations are noted at this time.

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INTRODUCTION

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Section I

PURPOSE

Many governmental and non-governmental entities are responsible for ensuring environmental protection throughout the nation. The majority of environmental programs are carried out through the shared responsibility of EPA and its non-Federal partners.

In Region 7, EPA has delegated a large share of its authority to the states. After delegation, EPA maintains responsibility for delegated programs and continues to be accountable for progress toward meeting national environmental goals and for ensuring that Federal statutes are fulfilled. EPA is responsible for ensuring the fair and equitable application and enforcement of Federal environmental laws, regulations, and standards, and to provide its partners with the necessary assistance, tools, methods, and back-up support to solve environmental problems.

In delegated programs, the goal of oversight is to strengthen the relationship between EPA and its partners to ensure that the national environmental goals expressed in the EPA Strategic Plan are attained. Effective oversight helps to ensure adequate environmental protection through continued development and enforcement of national standards, and the use of direct enforcement action against polluters as necessary to reinforce the action and authority of EPA's partners. Oversight also helps to enhance a partner's capabilities to administer sound environmental protection programs through increased communication and a combination of support and evaluation activities. Finally, Federal oversight seeks to describe and analyze the status of national and regional environmental quality, through continued collection and distribution of information from governmental agencies and other major sources. EPA is fully committed to the success of its partners' environmental programs. A clear expectation for program performance is a crucial factor in achieving an effective partnership.

Fostering quality delegated programs is not a static activity, and will vary across the different delegated entities. Conditions change, and program activities must change to respond to new environmental problems and challenges. Consequently, the methods used to oversee delegated programs must change over time, depending on the maturity and complexity of national programs and on the capability of EPA's delegated partners.

Section II

PROCESS

The 1984 “EPA Policy on Oversight of Delegated Environmental Programs” provides the foundation for structuring a Program Review. Starting with this policy, EPA Region 7 staff developed a *Program Review Protocol* document, which provides the justification and framework for conducting program reviews in the Air, RCRA, and Toxics Division (ARTD) of Region 7.

The protocol establishes a minimum frequency for conducting program reviews within the Division, defines the scope of full and partial reviews within each program, and provides a consistent basis for determining which type of review is appropriate. The protocol also provides a way to document the rationale for determining whether or not any program review effort is needed in a particular program. In addition, the protocol includes a summary of the regulatory requirements for the major programs within ARTD, a discussion of oversight policy, and a differentiation between the requirements of grant close-out reviews and program reviews.

The ARTD staff subsequently issued a second document, *Operating Principles for Conducting Program Reviews*. This is primarily an internal planning document which lays out the process for providing consistent internal procedures for Program Reviews.

Finally, the EPA staff developed the *Program Review Criteria Notebook*, which was used as the basis for the Kansas Program Review. This notebook contains the criteria and checklist for each of the program areas being reviewed. This notebook was provided to all of Region 7's state partners in January 2000.

Prior to 2000, the ARTD staff had conducted partial program reviews in other Region 7 states. The NSR and Title V permitting programs had been reviewed in three states, and the air permitting and compliance programs had been reviewed in two states. Two local agency programs had also been reviewed.

As stated in the Program Review Protocol, Region 7 plans to conduct a program review in each state once every four years. The Missouri Department of Natural Resources' Air Pollution Control Program was the first air program in Region 7 state to be reviewed under the new protocol. The Iowa Air Program is the second review to be completed, with KDHE's Air Program being the third.

Section III

PROCEDURE

The EPA team leader for the Program Review coordinated with the KDHE primary contact person in March 2002 to select a mutually agreeable date for the review. Considerable lead time was necessary considering the number of staff involved in both agencies. The week of July 10, 2002, was selected as the time for the on-site visit by the EPA staff. On May 7, 2002, EPA provided KDHE a 'kick-off' letter (see Appendix 1) which contained a detailed schedule for the week of July 10, provided certain checklist information, requested that the air program respond to several pre-review questionnaires, and listed a schedule for completion of the draft and final reports. EPA received all requested information in ample time to review prior to the entrance conference.

The EPA staff initiated the on-site review by conducting an Entrance Conference (see Appendix 2 for list of attendees). This meeting provided the opportunity for EPA to discuss its schedule for the week, identified staff EPA needed to interview, provided the state staff the opportunity to present preliminary questions to EPA, covered the use of KDHE facilities and equipment, and set a time for the Exit Conference.

EPA staff was on-site for three full days. The Exit Conference consisted of the EPA staff providing a verbal summary of their results. The KDHE staff provided additional information as necessary for clarification, as well as closing remarks (see Appendix 3 for list of attendees).

The EPA staff received the full cooperation and assistance of the KDHE staff throughout the on-site visit. Supervisors and individual staff members made themselves available as necessary to answer questions or to otherwise assist the EPA staff. EPA fully appreciates this assistance and spirit of cooperation.

Chapter III

PLANNING

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Section 1

INTRODUCTION

The areas of review in this chapter include:

- Regulatory Development
- Emissions Inventory
- Contract Analysis
- Grant and Work Plan Development
- Training
- Modeling
- Small Business Assistance Program

EPA specialists in the EI, modeling, and asbestos programs interviewed the respective KDHE program specialists during the on-site visit in Topeka. The SBAP information was gathered through telephone interview. The remaining information was gathered by the EPA APDB Kansas coordinator from the Planning and Development Program Questionnaire (see Appendix), and through interviews with the KDHE's Bureau of Air Quality and Radiation Director and other staff.

The organizational structure of the KDHE air program is:

Kansas Department of Health and Environment
Bureau of Air Quality and Radiation (BAR)
Administration Unit
Radiation and Asbestos Control Section
Air Monitoring, Inventory & Modeling Section
Air Operating Permit & Compliance Section
Air Construction Permit Section

A Personnel/Organization Chart is included in the Appendix for this section to further illustrate the program staff working in each area.

Section II

REGULATORY DEVELOPMENT

One person in the Administration Unit is primarily responsible for rule development and SIP submissions to EPA. The air program has recently developed a policy and procedure manual for rule development. The manual provides a standard technical and administrative development and review process, and includes an internal checklist and an internal tracking form to make sure that each step is completed in the rulemaking process.

The process also addresses Federal requirements which apply to the development of SIP revisions, updates for NSPS, NESHAP, and MACT Delegations, Title V Program Revisions, and 111(d) plans. Copies of the Federal requirements which pertain to the previously mentioned submissions/delegations are either kept in onsite files or included in the C.F.R. Adopted rules are submitted to EPA in a timely fashion and include all the necessary supporting documentation needed by EPA to take a Federal action.

The rulemaking process includes writing new or revised rules, internal review, holding a public hearing, collecting public comments, addressing the comments and making appropriate changes to the rule, and adoption by the Secretary of Health and Environment. After the rules are adopted by the Secretary, they are then submitted to EPA for inclusion into the Kansas SIP. (See the internal tracking form in the Appendix for this section.)

Over the past few years, new rules have been developed and adopted to address the ozone maintenance plan in Kansas City, update the monitoring SIP and opacity rules, and to make other routine rule revisions necessary to adopt ongoing Federal requirements. A biannual meeting is scheduled with EPA to review and plan for future rule revisions.

Since the implementation of the policy and procedure manual and internal checklist, rule development has improved. The time from when the rules are approved to submission to EPA for adoption into the SIP has significantly shortened, but the internal time required to produce a rule sometimes is delayed.

EPA recommends that dates be included in the KDHE internal tracking form to identify when rules are delayed in the internal review process. We also recommend including permit engineers and field inspectors during the internal review process where applicable to provide for easier implementation of the rules after adoption.

Section III

EMISSIONS INVENTORY

With the recent emphasis on emissions reporting as required by the Consolidated Emissions Reporting Rule (CERR), KDHE has agreed to prepare a draft QAPP. This plan is under current EPA review. Once approved, the QAPP will formalize the quality assurance process for the State and will help to ensure that the emissions data are properly peer reviewed. It is hoped that a technical defensible inventory will help to drive sound public policy. Therefore, future audits will have a central focus around the QAPP and the emphasis will be placed on ensuring this process was followed.

Inventory Preparation and Management

Currently there is no Inventory Preparation Plan for the state inventory. The draft QAPP will address this issue.

Documentation/Data Entry/QC

A random sample of emission sources were selected from the draft 1999 National Emissions Inventory (NEI) and the corresponding EIQs from the state files were pulled. The purpose of this process was to identify any data entry mistakes as well as to ensure that the NEI was reflective of state submitted data. First indications were that none of the state emissions matched the NEI. It was later learned that the errors were caused by EPA compilation of the 1999 inventory version. The subsequent version proved that all of the state submitted data were correctly entered as shown on the state EIQ forms.

Of lesser importance was the organization of the forms themselves. One of the EIQs had numerous handwritten corrections, and it was difficult to ascertain whether these markings were made by the facility personnel or by the questionnaire reviewer as well as to which number was the actual “total.” Also, some of the files had loosely attached spreadsheets that made it somewhat cumbersome to follow the EIQ, as they were not in always in order and easily mixed up among the other EIQs.

Emissions Reporting and Submission

Much emphasis was focused on the collection of the 1999 inventory. For several months prior to the submission date of June 1, 2001, monthly conference calls were held with the State and local agencies required to submit emissions data. KDHE was an active participant in all of these calls and provided value-added advice to other participants on various EI issues related to the collection effort. Kansas was one of only two Region 7 states that fulfilled all of their commitments of submitting a comprehensive data set by the deadline.

Proper attention has been given to the CERR in relation to the next large data collection

effort for 2002. KDHE has been in contact with their sources in order to minimize the burden that is expected to come from the added requirements. This foresight is an example of how the state has taken a proactive role in their data collection efforts.

Personnel Training and Resources

KDHE has qualified and experienced personnel in the EI section. They regularly attend the annual National Emission Inventory Conference, which is one of the few opportunities for free training. MOBILE6 training was also attended. Judging by the comparative quality of the state inventory, it appears available training is adequate. However, states are encouraged to inquire about training needs if they perceive a demand.

Section IV

CONTRACT ANALYSIS

The program has four contracts that are let with section 105 grant dollars. These contracts include aid to three local agencies: Wyandotte County, Johnson County, and Wichita-Sedgwick County and a contract with Mid-America Resource Council. Acceptable section 105 grant activities were completed through the contracts include monitoring, modeling, outreach, inspection, and compliance activities.

Section V

GRANT WORK PLAN DEVELOPMENT

The scope of this program review for the grants included completing the Post-Award Evaluation Protocol form and by reviewing the grant workplan process and the local agency oversight. To complete this part of the review, the Director of Bureau of Air and Radiation and the grants representative were interviewed to gain an understanding of the workplan activities and their relationship to the section 105 air grant funds it receives.

Post-Award Evaluation Protocol

The post-award evaluation confirmed that the KDHE Bureau of Air and Radiation met all of the requirements for Financial, Technical, and Agreement Specific requirements (see Appendix). The only concern raised regarding the post-award evaluation was that the mid-year progress report had not yet been submitted. Based on our discussions with the Director, the report was initiated shortly after the review and was submitted to EPA on July 8, 2002 (see Appendix).

Grant Workplan Process

A two-year grant workplan is negotiated between EPA and BAR prior to beginning of the first fiscal year. Minor revisions for the second year are then negotiated prior to the beginning of the second fiscal year for the two-year workplan period. (The 2002-2003 grant work plan is included in the Appendix.) EPA's Government Performance and Results Act commitments are addressed in the negotiations and usually included if the budget will allow. Separate work activities not covered by the section 105 grant work plan are tracked by work product.

Work activities are funded by 105 fees, 103 fees, or Title V fees and the funding category for each activity is determined on a case-by-case basis. Bureau-wide purchases or expenses are split based on how the salaries are funded. The biggest problem with the budget planning and grant process is that the Federal funds are not available at the beginning of the Federal fiscal year which is also the beginning of the grant year.

Work year requirements are based on budget and available resources. The state can request an increase in its state-authorized budget and work year ceiling by presenting an enhancement package/budget request through the Governor to the state legislature for approval. (See the Appendix for an example of the enhancement package for State FY-03.)

Local Agency Oversight

The state communicates with the local agencies through periodic meetings, conference calls, and one-on-one communication. The state priorities and commitments are included during the annual negotiations of local agency workplans. Annual audits of the local agencies are

conducted. Copies of the local agency workplans/contracts and audits are available for review in the state grant file.

At this time, the only local agency with rules included in the SIP is Wyandotte County. KDHE recently held a public hearing to remove these rules from the SIP. This submission to remove the Wyandotte County rules from the SIP should be submitted to EPA in the near future.

The local agency funding is determined through negotiations between the State and the local agency. Since Wyandotte County is the only local agency in Kansas that is direct funded by EPA, KDHE notifies EPA of the negotiated amount. The appropriate amount as determined by BAR is then granted to Wyandotte County by EPA. The local agencies also receive state funding from Title V fees and the amount allocated is also determined by BAR based on their workload.

Section VI

TRAINING

The BAR provides training to employees based on availability. The Air and Radiation staff participates in training offered by the Region 7 air program, at the State/Local Directors semiannual meetings, and the semiannual Permits workshops. A library of satellite downlinks is kept for employees to use as needed.

BAR does not maintain a separate budget category for training. Instead, training costs are credited to the program(s) which benefit from the training. Costs, availability, and staff time are all considerations related to training expenditures.

As part of the grant workplan requirements, a list of training funded by section 105 funds is submitted to EPA at the end of the fiscal year. A training officer at KDHE maintains a record of employee training.

KDHE requested that Satellite downlink training be reinstated as it was a good allocation of resources and more people are able to attend.

Section VII

MODELING

The air dispersion modeling review included discussions with Dana Morris, Andy Hawkins, and Douglas Watson. Dana Morris works mostly with permit applications, while Andy Hawkins and Douglas Watson work with regional modeling in support of CENRAP activities as well as modeling ozone for the Kansas City area. The meteorological data base is constantly being updated. All the people are fully qualified and are doing an excellent job.

Several PSD Permit Applications were reviewed. The Duke Energy Leavenworth Energy Facility (Duke Energy) located in Leavenworth County was given additional review after returning to the Regional Office. In the modeling protocol portion of the PSD application for Duke Energy, a potential problem that may be common to other PSD applications was discovered. The increment analysis may not be complete. Evidently Duke Energy is the first source requiring a PSD permit in Leavenworth County. Only emissions for this source were considered. Although this source triggered the baseline date for this county, other sources may have consumed increment, e.g., minor sources and/or other PSD in Kansas or Missouri. Kansas should review the procedure in which increment analyses are conducted to ensure that all increment consuming emissions are properly accounted for in future PSD modeling analyses.

The anemometer height for the Kansas City International Airport was incorrectly set at 10 meters instead of 20 feet.

The visibility analyses for Additional Impact Analysis should include locations closer to the source so the general public will be aware of any new plumes that may originate from the source.

Maximum allowed emissions or Federally enforceable permit limits should be used in the modeling for all hours. It is not necessary to model the emission source for twenty-four hours if the emission source is limited to a specific time of operations by Federally enforceable permit conditions (40 C.F.R. Part 51, Appendix W, Table 9-2, Point Source Model Input Data (emissions) for PSD national ambient air quality standard (NAAQS) Compliance Demonstrations). In certain circumstances, it was noted that short-term emission rates utilized in modeling which were not constrained by Federally enforceable permit conditions limiting either operation to specific times of day or annual hours of operation, were scaled with "operating factors." This approach is inconsistent with requirements specified under 40 C.F.R. 52.21 (I) for PSD NAAQS modeling analyses.

Kansas has significantly improved its regional modeling capability in the last several years. In addition to the acquisition of the necessary hardware and software resources, Kansas has made significant progress in the development of its expertise, especially in the areas of

meteorological and emissions modeling. Kansas has played an invaluable role in assisting in the CENRAP modeling workgroup and also in the Kansas City Ozone Modeling Study. We encourage KDHE to continue to develop its technical capabilities.

Section VIII

SMALL BUSINESS ASSISTANCE PROGRAM

STRUCTURE OF PROGRAM:

The Federal Register notice to finalize the SIP for the SBAP was finalized in 1994. In the State of Kansas, this program is called the SBEAP and includes the Ombudsman, the CAP, and the technical assistance staff.

The technical assistance portion of the SBEAP is contracted with the KSU Pollution Prevention Institute. KSU provides individual assistance to small businesses affected by environmental regulations through telephone inquiries, web site, on-site assessments, workshops, seminars, brochures, manuals, and a quarterly newsletter. The workplan and contract between KDHE and KSU is renewed on an annual basis and is designed to provide comprehensive services to small businesses. The Ombudsman provides oversight for the contract

A. Ombudsman and Compliance Advisory Panel Appointments and Duties

Are the ombudsman and Compliance Advisory Panel Appointments (CAP) positions filled in accordance with Section 507(a) of the CAA?

Program Response: Janet Neff (KDHE) is currently the Ombudsman. Kansas currently has five CAP members appointed as indicated by statute, and are awaiting appointment of the other two. The current CAP list is detailed in Attachment I.

Findings: No comments.

Does the Ombudsman have direct access to state agencies and officials to relay concerns of small businesses?

Program Response: Yes, the Ombudsman meets with various KDHE staff on a regular basis. The Ombudsman chairs the Kansas Small Business Assistance group which includes, but is not limited to, representatives of the Small Business Administration, the Small Business Development Center, Kansas Department of Commerce and Housing, Kansas Department of Revenue, and Kansas Department of Human Resources. This group meets quarterly unless a workshop is pending.

Findings: No comments.

Does the Ombudsman have authority and access to obtain data from state agencies?

Program Response: The Ombudsman has access to data from KDHE. Other state agencies are cooperative, but there is nothing legally providing “authority and access” to other agencies.

Findings: No comments.

Have sufficient resources been provided to successfully fulfill Ombudsman/SBEAP responsibilities?

Program Response: Yes

Findings: No comments.

Has the CAP rendered any opinions on the effectiveness of the SBEAP effectiveness?

Program Response: The CAP meets on a regular basis and has indicated that the SBEAP is providing good service. The CAP also reviews the annual report to EPA. No other reports have been compiled, or are required, at this time.

Findings: No comments.

Have any reports been submitted to the EPA’s Small Business Ombudsman?

Program Response: Beginning in 1995, the annual reports have all been submitted as requested.

Findings: The annual report for 2001 was submitted via e-mail. The report can be accessed at <http://sbapreport.ctcgsc.org>.

B. What outreach techniques are currently used by the SBEAP (seminars, Internet, etc.,)?

Program Response: The SBEAP uses the following techniques: a web site (www.sbeap.org), workshops, teleconferences, quarterly newsletter to more than 7,000 businesses, on-site assessments, printed brochures, manuals and fact sheets, and a toll free hotline number. Examples of printed materials are presented in Attachment 2.

Findings: No comments

Does the SBEAP coordinate with other programs, state, etc.?

Program Response: The SBEAP coordinates with other states in Region 7 including meetings and telephone calls. Printed materials are also shared through the Pollution Prevention Resource Information Center (www.p2ric.org), and the annual national conference.

Findings: No comments.

Describe how well the SBEAP provides compliance assistance to identify applicable requirements and obtain appropriate permits.

Program Response: On request, the SBEAP works with the business (usually one-on-one) to help determine appropriate permits, requirements, etc., as well as on-site assessments. Whatever help the business needs with environmental issues, can be requested through the SBEAP. In addition, the ombudsman developed a "Roadmap to Environmental Permits" which was just updated and can be found at www.kdhe.state.ks.us/environment. All services are free and confidential.

Findings: No comments.

Has the method been established for ascertaining the eligibility of small businesses to receive assistance under the SBAP?

Program Response: Small businesses receive top priority in receiving assistance. Larger businesses' questions are answered, and help is provided as time allows, but this is provided on an "as-available basis". Large facilities typically have not requested the SBEAP's assistance.

Findings: No comments.

What mechanism exists to exclude sources with sufficient financial and technical resources to meet their obligations?

Program Response: SBEAP advises large entities to seek the services of private consultants although large businesses/industries typically do not call SBAP for assistance.

Findings: No comments.

Chapter IV
PERMITTING

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Section I

INTRODUCTION

On July 23-25, 2002, EPA Region 7 performed an evaluation of the air permitting programs of the Unified Government of Wyandotte County—DAQ in Kansas City, Kansas. Region 7 had conducted a review of the Kansas state air permitting programs at the KDHE Bureau of Air and Radiation (BAR) in Topeka, Kansas, in September 1999. It was decided to concentrate this year's review on the DAQ permitting program. Although DAQ has their own permitting program, they have a good working relationship with the State. All DAQ permits are reviewed and approved by the State before final issuance.

The overall scope of the review focused on: (1) synthetic minor permitting, (2) NSPS, NESHAP, and MACT determinations, (3) establishment of enforceable permit conditions, and (4) the interaction between the Title V and NSR programs. The intent of the permitting programs review was to identify any major program deficiencies if they existed, to identify commendable practices, and to make recommendations on how to improve the programs. Specific source permits were reviewed to identify any instances or patterns of questionable permitting procedures.

Because of Region 7's national commitment to evaluate all major source pre-construction permits prior to issuance, the team chose not to evaluate PSD program during the on-site program review. The team also chose not to concentrate on specific Title V operating permits since Region 7 has an opportunity to request and comment on these proposed permits in real time. Instead, the review team focused on the interaction between NSR permits and Title V to ensure that pre-construction permit terms were properly being incorporated into the Title V permits.

The review team, from Region 7's Air Permitting and Compliance Branch (APCO) evaluated 22 source files and an estimated 52 permitting projects. Most of the projects reviewed were permitted in either 2000, 2001, or early 2002. They represented about half of the approximately 103 projects approved during this time frame. A pre-review meeting was held to acquaint everyone with the planned review. A post-review meeting was held to discuss our findings and other pertinent issues. During the review, the team also discussed a number of the projects with permit staff.

Before the review, a generic questionnaire for the review of air permit programs was sent to DAQ with a request to have it filled out and returned prior to the review. The DAQ complied with this request in a timely manner, but also expressed frustration as to the length of the questionnaire and the nature of some of the questions. The questionnaire consisted of questions on general program information and on specific areas such as applicability determinations and permit content. It would be used as a basis for discussion items during the pre/post review meetings.

Section II

PRE-REVIEW MEETING

A pre-review meeting was held on July 23, 2002, at the DAQ offices in Kansas City, Kansas. Those in attendance from DAQ were Bruce Andersen, Andy Beard, and Bill Stevenson. Those in attendance from Region 7 were the APCO review team consisting of Jon Knodel, Ward Burns, Dan Rodriguez, and Gary Schlicht. Ralph Walden and Vic Cooper from the KDHE Bureau of Air and Radiation in Topeka, Kansas, also attended. This meeting was to outline EPA's review procedures and to allow DAQ to make any comments or suggestions. EPA stated that they intended to comment on the general overall status of the program including exemplary practices and recommendations for improvement, along with comments on specific source permits. Bruce Anderson stated that the DAQ was a small but proud agency with a good reputation. The DAQ expressed their hope that the review would be helpful and a positive experience for everyone involved. Ralph Walden stated that BAR and DAQ are always striving to produce better construction and operating permits. Therefore, he suggested that we review current or fairly recent permits as they would be more representative of their current procedures. Specific source files would be pulled by the office secretary as requested.

It was also suggested that copies be made of the front page of any permit where specific comments are made to make it easier for DAQ to find the correct permit if review is called for. The DAQ expressed a desire that the post-review meeting be used to discuss the main issues/recommendations, therefore hopefully resulting in a more concise and less lengthy final report. Finally, the DAQ requested that the review report not be released until finalized by EPA and until DAQ had responded to the report.

Section III

CLOSE-OUT SUMMARY

The close-out summary was held on July 25, 2002, at the DAQ offices. The same individuals attended this meeting as were present at the pre-review meeting. Overall, no major permitting program deficiencies were found. However, recommendations were made on how to improve the permitting program. While most of the recommendations were general in nature, some source-specific problems were discussed. The majority of the source-specific findings will be included later in this final report. The EPA findings were grouped into five general categories. Each category contained various comments around which discussions were based. The five categories were staff, permit content, NSPS, project reviews, and operating permits. Also included in the meeting were three general discussion items: NAAQS impact analyses/modeling, environmental justice, and training.

Some general comments that were discussed included the use of and reliance on AP-42 emission factors, Title V format changes, identifying major/minor source status (MACT, PSD, etc.) and erring on the side of conservatism if a determination could go one way or another.

The DAQ was urged not to rely too heavily on AP-42 emission factors for compliance purposes. These factors represent an average of a range of emission rates and significant variability may be introduced. Emission factor ratings indicate the general reliability of these factors. More often than not, you will find factors with lower ratings than with higher ratings indicating that the quality of those factors is questionable. The most caution should be used when the calculated potential emissions are near any significant emission thresholds. We would then strongly recommend that performance testing be done to give a more reliable measure of actual emissions.

The topic of Title V operating permit format changes was briefly discussed. Over the years, various changes have been recommended to the BAR permitting staff. Many of the recommended changes are to be introduced with the permit renewals. It was stated that having to make significant format changes mid-stream is very time consuming. However, improvements can always be made to improve the quality of the Title V permits. The question was raised whether DAQ is being kept abreast of any format changes made by BAR. We were assured that DAQ is in constant contact with the Title V permitting staff at BAR to ensure consistency regarding any changes. It was also noted that DAQ has around eighteen or nineteen Title V sources and that four initial T5 operating permits have been issued. The DAQ said the issuance rate is somewhat low because of priority given to construction permits.

There was discussion on the topic of the reviewers not being able to readily identify the potential-to-emit (PTE) status of a source in regard to PSD and MACT thresholds. Ways were

discussed to easily identify this information in the files. One suggestion was to keep a running tally of a source's PTE possibly on the chronological pages located on the inside of each permit cover.

It was stated by one of the reviewers that when a determination was made by DAQ as to the applicability of a standard to a source and the applicability was in question, the agency tended to err on the side of conservatism and determine that the source was subject. This was agreed to be the best way to handle these situations. There was discussion on NAAQS impact analysis and modeling. It was noted that outside of the PSD realm, not much is being done in this area. We were told that DAQ had no modelers and that BAR had only one. Both agencies acknowledged that there were shortfalls in the modeling arena. DAQ mentioned that they were considering using some section 105 grant money to have Trinity Consultants put on modeling training for the agencies. It was stated that a long-term goal is to develop a protocol for screen modeling.

Another topic was environmental justice (EJ) and how to incorporate it into the permitting process. The DAQ stated that virtually nothing is being done with permitting in regard to EJ. Their take was that EJ was something that the city planner's office would be involved with. The DAQ was informed that EPA is pushing to include an EJ factor in the air permitting process. It wasn't a question of if it would happen, but rather when it would happen. This push would also include other media such as water and the Resource Conservation and Recovery Act. EPA feels that this effort can be justified through current regulations. Public participation would play a major part in any EJ component. The DAQ was informed that EPA is developing EJ training to help with this effort. The discussion was more of a heads up for DAQ to look for this added permitting component in the future.

Lastly, training in general was a topic for discussion. It was noted that DAQ was under much restraint by the county as far as attending any training outside of the county. The training budget is there, but it is very difficult to get training approved if any significant travel is involved. In general, an employee is allowed one trip per year out of the county if it is approved. The DAQ feels that it is critical to keep the staff trained and is very frustrated at the current process. The DAQ is aware that the EPA Region 7 building has a downlink for satellite broadcasts from the Air Pollution Training Institute and that they are welcome to attend broadcasts whenever they are offered. There was some talk of the various different sources for training. The thought was expressed that it would be great if all of the different sources of training were compiled at one location on the web.

EPA would like to thank Bruce Andersen and his staff at DAQ for their help in answering questions and making the audit run smoothly. Thanks also go to the secretarial help in pulling files for review, which was done in a quick and efficient manner.

Section IV

SUMMARY OF FINDINGS AND CONCLUSIONS

Overall, the department is running a very competent permitting program. As was evident from our meetings and file review, the staff is knowledgeable about the air program and generally make conservative decisions. As during any program review, we found both strengths and weaknesses. There are always areas for improvement in any program. All of these findings are described in more detail below. However, advances made since the last formal program review in the late 1980s reflect that the department has matured and is dedicated to preserving air quality. It appears that the program is on the right track and is a good model for others to follow.¹

DAQ Staff

The DAQ currently has a staff of six people, including Director Bruce Andersen. There are two positions (engineering supervisor and project engineer) which are unfilled at this time. The DAQ is in the process of trying to fill the project engineer position. There are no modelers or professional engineers currently with DAQ. The permit staff seems to be well trained and very knowledgeable of current air regulations, policies, and data bases (EPA, state, and local). They are capable of solving their own problems, as there was no evidence of using private consulting firms. When necessary, they involve others, e.g., BAR and EPA, to help accomplish their permitting work. Besides permitting activities, the staff is also involved in source inspections, responding to complaints and enforcement activities. Overall, the permit team appears to have a well-rounded understanding of the complexities of the air program and is well informed about many aspects including SIP rules, technology standards, source testing, construction and operating permit rules, inspections, and compliance resolution.

Exemplary General Practices

- The DAQ has one engineer assigned to each specific source that is responsible for all aspects of that source's permitting, compliance, and enforcement activities. This "cradle to grave" approach makes the engineer very familiar with the source. This approach promotes consistency and is very helpful in understanding changes when they occur at the facility. Each engineer also has areas of expertise which allow them to help fellow engineers when problems or questions arise.

¹ We encourage the reader not to over-emphasize or compare the relative number of strengths or weaknesses, or the relative length of text summarized in this section. Overall strengths in the program heavily outweigh any weaknesses. By necessity, the "areas for improvement" and the basis for these recommendations requires a more comprehensive review and write-up.

- The custom-made source specific inspection forms are excellent. The inspector always knows exactly what to look for at any given source. The comment section on the forms always seemed to have helpful, detailed comments for both DAQ and the source.
- The construction permit files provide comprehensive information for both past and present project activity.
- PTE calculations for individual projects were comprehensive and well documented. The department generally relied on the most recent, published emission factors and made clear reference to the AP-42 publication section and date. We also noted many instances where staff reviewed, challenged, and corrected emissions estimates made by sources and consultants. This is a healthy process to ensure that applicants use the most recent, or best documented, information.
- It is evident that DAQ has procedures and practices in place to incorporate past construction permits into Title V operating permits. Title V permits include clear references to past permits and appear to incorporate all applicable preconstruction requirements. All of the operating permits targeted for review (based on NSR problems described in the company's initial compliance certification) appear to have adequately fixed the NSR problems prior to operating permit issuance.
- We found many telephone conversation records and e-mails between the permit review staff and sources and their consultants throughout the files. This is a good indication that the staff is conducting comprehensive reviews and is not necessarily taking the information in permit applications at face value.
- The files, in nearly all instances, clearly indicated which specific NSPS, NESHAP, and MACT regulations would or would not apply to the equipment under review. Most all of the applicability determinations were made correctly and in the few instances where there were questions the department erred conservatively by applying the technology standards.
- The DAQ filing system is well organized as they were able to find and retrieve files quickly upon request.
- The file system included two files for each source. One file included all documentation. The other file was just for all permits. This was useful because one did not have to wade through every document just to find the permits that were issued. It would seem that this system would be helpful in writing Title V permits. However, one must ensure that any documentation for a source is placed in the proper files.
- The construction permits and construction approvals all seemed to have good descriptions of the emission units being approved.

- The Class II and construction permits all had proof of compliance with public notice requirements.
- The use of NSPS notification forms is a good idea. The forms are filled out by the source when they become subject to any NSPS and are submitted to DAQ.
- The chronological document summary inside the front cover of each file folder is helpful. At a quick glance, one can see an overall picture of all activities at a source.
- It was noticed in some files that a concurrence form was used, which was signed by the source and by DAQ. It basically confirmed the fact that a source had received a copy of a permit and had read the permit and understood what the permit requirements were for the source. This seems like a good idea. However, the more recent files did not have this form, indicating that maybe the form was no longer being used.
- In general, construction project reviews are completed in a timely manner.
- Construction permits set forth the enabling legislation or legal authority and do not contain vague or difficult to enforce provisions. Permits are reviewed by the DAQ supervisor and, in most instance, are co-signed by the state.
- Permits generally establish special compliance provisions for the first 12 months of operation when 12-month rolling average restrictions are established.
- The DAQ uses outside tools to help make NSPS applicability determinations such as KDHE-developed checklists and the EPA's Applicability Determination Index (ADI) data base.

Recommendations for Improvement²

- There was little or no evidence that the source or department completed an ambient air quality analysis for individual projects. While the DAQ and BAR rules do not explicitly require that such an analysis be performed for "minor" projects, the premise behind approval of any air-related construction is that the project will not cause or contribute to an exceedance of the NAAQS. Without the benefit of a screening review, it is difficult to assess whether the permits and other construction approvals are protective of air quality or not. Several of the projects reviewed likely could have benefitted from such a review. While we realize that modeling can add additional delay and expense to a permitting project, we would encourage the department to put a policy in place that makes an informed judgment about whether modeling, screening or more detailed, would benefit the construction approval record. In the absence of such a policy or actual modeling, it is

² The "recommendations for improvement" are generally listed in priority order from those of most concern to those of least concern.

difficult to defend whether the minor source permitting program can effectively prevent NAAQS hotspots or not. Screening modeling can be particularly important in sensitive areas such as communities with EJ concerns or areas where ambient monitoring data are unavailable or otherwise not representative. The DAQ acknowledged that it would like to develop this capability and will be working with BAR and the Central States Air Resource Agencies for providing for training opportunities.

- The topic of using AP-42 factors was discussed some at the closeout meeting. It appears that DAQ does not have a policy regarding the use or acceptability of AP-42 emission factors. The DAQ appears to rely almost solely on AP-42 emission factors for applicability and emission limit setting purposes, and doesn't appear to question the representativeness of those factors to the specific activities being addressed. AP-42 emission factors generally are averages from a broad range of emission rates and may be lowly rated. As such, they may be adequate for regional SIP planning purposes but they may be inappropriate for permitting purposes. As a consequence, we recommend that DAQ pursue better data, particularly data specifically generated via emissions testing of the equipment being reviewed. This is especially important when a project's emissions are at or near "critical" applicability thresholds. The DAQ should consider development of a policy regarding the use or acceptability of AP-42 emission factors.
- Potential emissions for individual projects were well documented in the source files, but the permit records were generally silent on the source PTE. The source PTE is critical to understanding whether "significant" projects trigger PSD review or not. Even though the department generally has a very good feel for which sources are major and which aren't—especially for Title V purposes—it would be helpful to see this major source status information documented in the permitting files. One approach that has been very successful in another Region 7 state is to place a table of permitting actions and associated changes in potential emissions, in chronological order, in each permit. This approach not only shows the effect of the project currently under review, but helps to determine whether a source is breaking apart a larger project to avoid PSD review. While we did not find any indication that sources are disaggregating larger projects into a series of smaller de minimis permits to avoid PSD review, documenting the construction history and source PTE is, on balance, a useful exercise. Also, because of the possible difference in major source applicability thresholds, it would be helpful if DAQ would clarify if Class I sources are also major for PSD, as it was sometimes hard to tell.
- Our review found several "as built" projects, i.e., projects that were constructed prior to department approval without the benefit of any technology or ambient modeling review. This may indicate that new companies are not getting sufficient advice from various trade group representatives, commerce and growth organizations, or chambers of commerce to consult with DAQ prior to constructing. It may also indicate that the department could do a better job getting the word out to companies about their permitting obligations. With comprehensive permitting forms and instructions widely already available on the BAR web site, it should be easy for most sources to find the necessary application

materials. It may be possible for DAQ to enhance the availability of these tools by informing sources during routine communications such as inspections. Periodic permit training workshops, presented in the Kansas City area, may also help to reduce the number of “as built” projects. In any case, we found that all of the “as built” projects could be resolved under the minor source permitting program and were not cause for concern in the PSD program.

- In general, we noted that a number of the permits did not contain the classic elements of an enforceable permit, such as: (1) averaging times, (2) initial and ongoing compliance measures, (3) a clear explanation about whether stated design elements are intended to be enforceable or just informational, (4) how to measure and report excess emissions—including those during startup, shutdown, and malfunctions, and (5) authorized construction dates. While we agree that these elements are more critical for major emission units or those units which emit close to their respective emission standards, it is important to ensure a consistent approach in setting each permit condition. It is also helpful to document why certain elements, like testing or ongoing compliance verification, are unnecessary if ultimately not specified in a permit. We recommend that the department consider adopting a standardized approach to ensure that all limits are enforceable as a practical matter.
- Permitting, major and minor, does not involve EJ considerations or prior public involvement regarding this matter. This topic was on the close-out agenda as a discussion item. At some point, in the near future, EPA will emphasize EJ as a necessary component to the air permitting process, as well as other media permitting. EPA is currently developing EJ training. DAQ is urged to look into possible mechanisms for including this component in future air permits and to keep abreast of the EPA efforts regarding EJ including future EJ training.

Follow-Up

- We recommend that the department undertake an effort over the next year to focus on the top three to four “Recommendations for Improvement.” As appropriate, the department may re-prioritize the list to concentrate on those areas most critical to the continuing success of the permitting programs.
- Pending further discussion with DAQ and BAR, the “no permit required” decision for Meridian dated January 15, 2001, should be reevaluated as either a PSD project, or a 250 ton-per-year limitation should be set on the entire plant such that it would not be considered a major stationary source for PSD purposes. Please refer to the last bullet under Meridian in Appendix A.

- The DAQ should consider potentially reopening the Meridian Title V permit for inclusion of applicable requirements that were overlooked at the time of Title V issuance. Please refer to the second and third bullets under Meridian in Appendix A.
- The DAQ may want to review the production rate increase from the new product line at INX International Ink in relation to volatile organic compound (VOC) emissions. It does not appear that the project's PTE is properly limited. This raises the possibility of PSD applicability. Please refer to the last bullet for INX International Ink in Appendix A.
- We suggest that DAQ revisit the Darling International Alternate Fuel Project determination. The DAQ should consider imposing emissions measurement requirements on the company and the use of 40 C.F.R. Part 60, Appendix C - Determination of Emission Rate Change. Please refer to the sixth bullet under Darling International in Appendix A.
- We suggest that the department revisit an NSPS applicability determination made for Harcros Chemicals. The determination involved the content change of a storage tank from water to methanol. The determination was that the tank was subject to NSPS Subpart Dc, but the decision may not have been adequately supported. Please refer to the first bullet under Harcros Chemicals in Appendix A.

Chapter V
COMPLIANCE AND ENFORCEMENT

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Section I

INTRODUCTION

Purpose of the File Review

The purpose of the review was to ensure that violations are being identified by KDHE, that HPVs are being reported to EPA Region 7, and that timely and appropriate enforcement actions are taken on the violations. The review also included an overall assessment of the air enforcement program.

Staff

The EPA enforcement review team included Kevin Barthol, Mike Bronoski, and Angela Catalano, all representatives of the APCO Branch. Chuck Layman, Vic Cooper, and Russ Brichacek were the primary representatives for the KDHE air compliance program.

Section II

METHODOLOGY OF REVIEW

Meeting Preparation

Prior to meeting with the State, several elements were developed to assist in the review. A list of source files to be reviewed was sent to KDHE approximately two weeks prior to the review to allow the State time to gather the file information at one central location. A total of 50 files was reviewed during the audit. The sites were randomly selected from the areas of jurisdiction of each of the six District Offices within the State. About seven source files were reviewed per District Office. The sources selected were mainly facilities that were classified as major sources which were subject to significant Clean Air Act requirements such as NSPS, NESHAP, and MACT.

The AFS data base was used to pull retrievals to assist in the selection of sources for file review. Summary reports from the PC-CEMS data base generated by EPA were utilized in the file review.

Entrance Meeting

During the kick-off meeting with all EPA and KDHE personnel, EPA informed KDHE that after reviewing their response to the Compliance and Enforcement Questions (Appendix C1) there was no additional information needed at that time. However, we did ask that someone in the enforcement group be available if questions arise during file review.

File Review

To assist with the file review, a checklist was developed by EPA. This checklist was filled out for each file reviewed. A copy of the checklist is included in Appendix C2. The focus of the review was the time period starting with calendar year 2000 through the date of the review. Pertinent documents which were developed outside of this time frame, but still had a current regulatory impact on the source, were included in the review as well. If relevant information was found during the review, copies of this material were made and attached to the checklist.

Exit Meeting

At the completion of the file review, an exit meeting was held on June 12, 2002, with EPA and KDHE management to discuss the preliminary finding of the review. The highlights of the more significant issues were discussed along with other miscellaneous feedback and comments. The most significant issues communicated to KDHE were: possible violations that

meet the HPV criteria that were not designated, failure to document in the files follow-up actions taken, and Title V certification forms not reflecting part 70 requirements. A copy of the summary notes was left with KDHE.

Section III

OVERVIEW OF KANSAS ENFORCEMENT PROGRAM

See Appendix C1 for KDHE's response to the Program Review Criteria Compliance and Enforcement

Section IV

SUMMARY OF FINDINGS AND RECOMMENDATIONS/COMMENTS

General Findings

The following comments provide details of the findings of the review. In certain cases, the comments describe situations where there was not enough information in the file to make a conclusive decision whether or not a violation occurred. As discussed during the closeout meeting, EPA is requesting that the State respond to the comments and provide any additional information in those situations where it is not possible to conclusively determine whether or not a violation occurred.

1. The department is commended for its file organization. The ease of identifying file categories by their colors made our review go very smooth.
2. The department is commended for its source specific and NSPS inspection checklists that have been developed for certain subparts. KDHE is encouraged to continue this practice because it is an excellent tool for the inspectors and it enhances the State's compliance program.
3. The department is commended for its handling of complaints. The complaints that were reviewed all had a detailed description of the problem/issue and were all handled in a timely manner.
4. Although there were only a couple of sources, Western Resources—Lawrence (#04500014) & Sunflower Electric—Holcomb (05500023), reviewed that had Excess Emission Reports (EER), both of the sources had exceeded either the 1 percent of total excess emissions or 5 percent of total compliance monitoring strategy (CMS) downtime as stated in C.F.R. 60.7. There was no type of notification to the sources about these exceedances or enforcement actions in the files to resolve this.

Comment 1: How does KDHE handle EERs when they are submitted with exceedances?

5. When the Title V sources were reviewed, it seemed that not all of the facilities were submitting Semiannual and Annual Title V Certifications as required.

Comment 2: In the KDHE response to the Compliance and Enforcement questions, it was noted that such self-reporting forms are received, date stamped, logged in, and reviewed by the air compliance unit staff in the Central Office, and entered into spreadsheets for tracking. In addition to those

received, some kind of check/review needs to be preformed in order to identify those not reporting, so the appropriate enforcement can be taken.

6. An ongoing issue is that the Kansas Title V Certification form does not adhere to part 70 requirements.

Comment 3: During the closeout Chuck Layman said that KDHE is working on changing the form.

7. During the review it was observed that follow-up to actions did not always happen. See source specific findings for more detailed examples.

8. Two facilities appeared to be submitting an excessive number of malfunction reports under K.A.R. 28-19-11. The sources identified during the review were Ash Grove Cement (#13300001) and Johns Manville (#11300036).

Comment 4: K.A.R. 28-19-11 allows KDHE to declare that a violation has occurred if the emissions in excess of the limitation specified in the emission control regulations has been exceeded and the number of occurrences of such breakdown is deemed excessive. It is recommended that KDHE further pursue the malfunction reports which are excessive in number.

9. Some of the violations noted during the review appeared to meet the HPV Criteria, as defined in the December 22, 1998, Issuance of Policy on Timely and Appropriate Enforcement Response of HPVs; however, there was no designation. See source specific findings for more detailed examples.

Source Specific Findings

GE Engine Services-Strother Field (#03500031):

The facility submitted two consecutive MACT subpart GG semiannual compliance status notification reports for September 1, 1999-February 29, 2000, and March 1, 2000-August 31, 2000, stating that they were not in compliance with the hand-wipe cleaning requirements.

Comment 5: It is KDHE's responsibility to review the documents that are submitted and see that appropriate enforcement followup action takes place and is documented in the files.

Haven Steel Products, Inc (#15500086):

The company submitted a letter to KDHE dated July 25, 2001, stating that it was not in compliance with the Class I Operating Permit due to failure to submit the annual certification. In addition it did not submit the semiannual report required by the permit. The letter also requested an exemption from the semiannual reporting requirement.

Comment 6: It is KDHE's responsibility to review the documents, respond when necessary, and see that appropriate enforcement follow-up action takes place and is documented in the files.

Cessna Aircraft Company - Independence Plant (#12500063):

On March 12, 2002, a partial compliance evaluation was done at the facility. The company was issued a Notice of Non-Compliance (NON) for not having records of the mass of hazardous air pollutants (HAP) and VOC emitted per volume of coating per each formulation. The NON called for a letter describing the corrective actions taken to reestablish compliance and a reinspection would be done by April 30, 2002.

Comment 7: There was no response from the facility and there was no follow-up inspection in the files.

Prestige, Inc. (#20500025):

On March 14, 2002, a full compliance evaluation was conducted. At the time of the inspection the facility had failed to develop, implement, and maintain a written pollution control plan. Second, the work practice implementation plan used by the facility did not include methods used to demonstrate and document successful completion of operating training. A NON was issued that called for a letter describing the corrective actions taken to reestablish compliance by April 19, 2002. A reinspection would be done by April 30, 2002.

Comment 8: There was no response from the facility and there was no follow-up inspection in the files.

Energysys, Inc. (05100022):

On March 26, 2002, KDHE issued a NON for failure to demonstrate compliance with the lead standard, 40 C.F.R. Part 60.372(a)(4). The NON requests that Energysys respond by April 10, 2002.

Comment 9: There was no follow-up response from Energysys in the files and this type of violation should be considered as a potential HPV.

Genmar Manufacturing of Kansas, LLC (06100018):

On May 5, 2002, the facility submitted notification of its usage of Xylene. The results for the rolling-four quarter total ending the first quarter of 2002 were 12.3 tons, and the rolling-four quarter total for all HAPs during this same quarter was 24.31 tons. The source was inspected on December 20, 2000, and a NON was issued for not keeping VOC/HAP records.

Comment 10: Genmar violated its HAP usage as specified in its Class II Operating Permit. There is no follow-up enforcement documentation in the files. Further, such a violation meets the criteria for a HPV.

Cloud Ceramics (#02900009):

KDHE issued a letter on October 26, 2001, requesting the submission of a Class I Operating Permit Application. The source did not respond by the set date. KDHE then issued a NON on January 15, 2002, for failure to submit an operating permit application. The NON stated that the forms be completed and returned by February 11, 2002. There was a Full Compliance Evaluation done at the source on February 18, 2002, and the source was found in compliance.

Comment 11: There was no response to the NON request for the Class I Operating Application in the files. The failure to submit Title V Application in the appropriate time should be considered an HPV. In addition, the Full Compliance Evaluation found the source to be in compliance.

Additional Recommendations

In addition to the previous recommendations/comments, EPA Region 7 also makes the following recommendation. If KDHE disagrees with the recommendations and comments made in this section and the previous section, EPA Region 7 requests that recommendations and comments be identified when the State responds to this report.

1. KDHE is not reporting its stack test results through I-Steps into the AIRS/AFS data base as outlined in the April 25, 2001, Compliance Monitoring Strategy. For CMS AFS tracking purposes the following format is used:

List the Appropriate Air Program Code(s)

Action Types:

Reviewed B1 - State Required (Owner/Operator Conduct) Stack Test, Observed &

AR - State Required (Owner/Operator Conduct) Stack Test, Not Observed, but Reviewed

A7 - State Conducted Stack Test

Date - Date the stack test was performed (Date Achieved Field)

Results Code - The conclusion of all stack tests should be recorded using the following codes:

PP - Pass

FF - Failed

Pollutant - The pollutant related to the conducted stack test should be recorded in the pollutant field on the action.

Chapter VI

ASBESTOS

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Section I

INTRODUCTION

The Bureau of Air Quality and Radiation of KDHE implements a fully delegated Asbestos NESHAP program pursuant to 40 C.F.R. Part 61, Subpart M. The program is responsible for notifications, inspections, enforcement case development, outreach, and data management. Given the limited resources devoted to the program, the level of effort is commendable. KDHE exercises common sense and good judgement in prioritizing inspections and pursuing enforcement actions. The enforcement files are well organized, and include adequate documentation to support enforcement actions. KDHE also implements an asbestos licensing program for workers and contractors/supervisors.

Section II

PROGRAM OPERATION

1. Non-notifiers

KDHE identifies non-notifiers in several ways. Abatement projects notified using demolition work practices are tracked to ensure that more stringent work practices are not actually warranted when the work ensues. KDHE receives several citizen complaints per month, and many of these constitute demolitions with no prior notification. KDHE endeavors to follow up on all citizen complaints. Field inspectors from other programs are trained to look for demolitions in progress. Also, news media reports are monitored to learn of non-notified projects.

2. Enforcement Response Policy

KDHE has a written asbestos program enforcement policy document dated August 12, 1992, which considers gravity of the violation, compliance history, economic benefit, and other relevant factors. Generally, a notice of noncompliance is issued for first-time violators and for paperwork violations, whereas penalties are sought for repeat violators of emission control requirements. KDHE can levy penalties of up to \$5,000 per violation for state regulations, and up to \$10,000 per day for NESHAP violations.

The August 12, 1992, enforcement policy does not appear to address the timeliness of enforcement actions; however, KDHE management and staff do keep track of case review and enforcement.

3. Education and Outreach

KDHE takes advantage of opportunities to provide education and outreach to interested parties. KDHE meets frequently with city officials planning urban renewal projects, and conducts "courtesy" inspections so that demolition and renovation requirements can be communicated beforehand. Similar approaches are also conducted with school districts planning renovation projects.

4. NESHAP Category I Nonfriable Floor Covering

KDHE follows EPA's policy with regard to the removal of Category 1 nonfriable floor covering. If the material is in good condition, and is not sanded, ground, or abraded, the removal is not considered a regulated project.

5. Policy Determinations

KDHE maintains a Q&A notebook of EPA policy determinations and also accesses EPA's ADI.

Section III

DATA MANAGEMENT

KDHE staff enter notification, inspection, and enforcement information into the department's AS400 data base, and the hard copy report is maintained in the licensed abatement company's inspection file folder. If an enforcement action is initiated, then an enforcement folder is started and is maintained until the case is closed out.

The AS400 data system is comparable, though not directly compatible, with the National Asbestos Registry System (NARS). KDHE is able to generate a file that can be uploaded to NARS on a quarterly basis.

Section IV

FILE REVIEW

KDHE's files are organized by contractor name, and separate subfolders are maintained for notifications, inspections, and enforcement actions (if applicable). The files are well organized and contain sufficient information to document enforcement actions. File documentation was excellent and included telephone conversation records, inspection reports, event chronologies, newspaper articles, results of asbestos sample analysis, notices of noncompliance, administrative orders, and penalty actions. In particular, the compliance inspection reports were well written and contained extensive narrative discussions in instances where enforcement action was to be pursued. Asbestos samples and chain of custody information are filed at the KDHE laboratory facility. In all files examined, enforcement actions taken were appropriate for the gravity of the violations.

EPA recommends that KDHE include a memorandum in enforcement files which documents the calculation and basis for penalties which are assessed. Most enforcement actions appeared to proceed expeditiously and delays seemed to be beyond the control of the department. KDHE also keeps a well-documented asbestos sampling log book. Entries include analysis results, the location from which the sample was taken, and the physical properties of the sample.

Section V

RECOMMENDATIONS

Include a memo in enforcement files which documents the calculation and basis for the assessed penalty.

Chapter VII
AIR TOXICS

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Section I	Introduction
Section II	Methodology of Review
Section III	Overview of Program
Section IV	Summary of Findings
Section V	Recommendations

Section I

INTRODUCTION

Purpose of Review

The purpose of the review was to assess the adequacy of the implementation of the Air Toxics Program in Kansas.

Staff

The EPA review was performed by Richard W. Tripp of EPA Region 7 Air Permitting and Compliance Staff. KDHE was represented by Chuck Layman, Tom Gross, Russ Brichacek, Cheryl Evans, Sean Bergin, Mariellen Butler, Ron Smith, and Linda Dale of the Bureau of Air and Waste. EPA gratefully acknowledges the assistance provided to EPA for this review.

Section II

METHODOLOGY OF REVIEW

Review Preparation

Prior to the meeting with KDHE, questions were asked about the implementation of the air toxics program. The State provided answers prior to the meeting. The responses are in Appendix T-2. The State was provided with a list of source files which they provided for review on the week of June 10, 2002. The list of reviewed files are attached as Appendix T-1.

Onsite Review

The onsite portion of the audit consisted of interviewing KDHE personal and reviewing files. The written response to the questions reviewed and KDHE personnel were interviewed for clarification. To assist with the file review, a checklist was prepared ahead of time and filled out for each source reviewed and is attached as Appendix T-1. Copies of the pertinent inspection reports and other documentation found in the KDHE files were attached to the appropriate checklist in Appendix T-3.

Exit Meeting

At the completion of the on-site visit, an exit meeting was conducted on June 13, 2002. The highlights of the more significant issues were discussed. Overall, the KDHE program is tracking and inspecting for compliance for most of the MACT sources in the State of Kansas. It was communicated to KDHE that a detail checklist was not available on some MACT source inspections. The inspections of more than a few dry cleaners for compliance with MACT are not now, and have never been, performed. For more details of the findings of this review, see the "Summary of Findings" section of this report.

Section III

OVERVIEW OF THE KANSAS AIR TOXICS PROGRAM

Organizational Structure

The BAR is where rules are adopted, the sources are tracked, reports submitted, inspection reports reviewed, and permits written. The field offices' Bureau of Environmental Field Services (BEFS) or local agencies conduct source inspections. Source tests are observed by the BAR or the local agencies.

Inspections

The BAR determines the number of inspections in each of the six field offices. The district field inspector submits a schedule of monthly inspections, and the inspection numbers are evaluated by the BAR Central Office quarterly. Complaint inspections and other investigations/site inspections are scheduled as needed, and generally as soon as practical. Central office and district staff use a Complaint Investigation form for documenting on-site investigations, as well as telephone or written complaints received from any source (public, governmental agencies, industry, etc.).

The report is expected to be sent back to the BAR within ten days of the inspection. Most of the inspection reports contain a cover sheet, a checklist, and comment sheet to determine basic source information. The report is reviewed for completeness and documentation of regulatory compliance.

Most Title V sources are inspected every year. The Synthetic Minors (KDHE Class II) sources are scheduled every two years. All Synthetic Minor sources in Kansas are scheduled for inspection on a one- or two-year cycle. Most other minor sources (KDHE "B" sources) are scheduled to be evaluated on a once every five-year cycle, except in Shawnee County where they are inspected on a yearly basis.

Follow-Up

The data from the reports input into the BAR system and data are transferred to EPA for entry into AIRS. All reports are reviewed by BAR staff where follow up action is taken if deemed necessary.

Data Tracking

The BAR personnel have used different spreadsheets over the past few years. The initial spreadsheets had a separate page for each standard, and listed the source and the points subject to

the regulation. A second generation spreadsheet is being used that also tracks the compliance with the reporting requirements. BAR personnel are in the process of designing a data base to handle the requirements of the MACT notification and reporting and tracking.

Section IV

SUMMARY OF FINDINGS

Management of Program

KDHE receives the initial notification reports, tracks and observes the performance test, and tracks the compliance status. KDHE also incorporates the MACT standard in the permits, and tracks the semiannual and annual compliance status reports. They schedule inspections, review inspections, and track completion of the inspections. Two MACT categories, dry cleaners and secondary aluminum sweat furnaces, are not handled in this manner. The Bureau of Waste Management was tasked with inspections of dry cleaners and secondary aluminum sweat furnaces. The compliance data are entered into I-Steps, and some of the inspection and compliance data transferred to EPA for entry into AIRS.

Inspections

Targeting of inspections, documentation of the sources' compliance during the inspection, and reviews of the inspection report for the BEFS are excellent.

Two Inspection Reports, "Safety-Kleen, Inc, 2549 N. New York, Wichita" and "Raytheon Aircraft Company, 9709 E. Central, Wichita" did not have a detail checklist accompanying the inspection report. These inspection reports did not detail how the sources were complying with the standard. Appendix T-3

The one MACT standard, the dry cleaners' standard, Subpart M, is not tracked by the BAR program. In 1996 apparently the Bureau of Waste agreed they would inspect the dry cleaners for compliance with the MACT standard. The Bureau of Waste submitted a list entitled "Outreach Cleaners" which listed 16 dry cleaners (Appendix T-4). The files for "Bentley's Garment Care Ctr., Neodesha," and "Hygenic Dry Cleaners, Topeka Kansas" were reviewed; these inspections do not include an air component to the inspections. The BAR program reviewed the Kansas files, after the on-site audit, and only found one dry cleaner inspection that included an air component to the inspection. EPA had received notifications from 145 dry cleaners located in Kansas.

Section V

RECOMMENDATIONS

EPA makes the following recommendations in response to the findings listed in SUMMARY OF FINDINGS.

- Evaluate the inspection reports for the local agencies and ensure that they meet a standard that allows the reviewer of the report to determine which parameters were checked to determine the source's compliance status and the compliance.
- Revise the implementation plan for the MACT standard for dry cleaners.

Chapter VIII
TITLE V FEE REVIEW

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Section I	Introduction
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INTRODUCTION

The purpose of the Title V Fee Review was to assure that KDHE was collecting adequate fees and accounting for the direct and indirect costs associated with Title V and Non-Title V activities.

Section II

METHODOLOGY OF REVIEW

EPA started the Title V Fee review by submitting a set of questions to the KDHE, Bureau of Air and Radiation (BAR), concerning the Title V fee revenue, expenditures, and the accounting system. KDHE provided detailed responses to the questions prior to the program review; however, KDHE was asked to give some clarification during the review.

The KDHE uses an Emission Inventory form for sources to identify their actual emissions for NO_x, VOC, PM₁₀, SO_x, PT, CO and HAP pollutants. Based on the amounts identified, an annual fee is paid on a per-ton basis. The current regulation fee is \$20.00 per ton. The fees are tracked by the source identification number using a spreadsheet.

The KDHE staff track their time through the use of cost codes to differentiate between Title V and Non-Title V activities. The BAR has a total of 53 people doing air quality work. Currently, Title V dollars fund 29.7 BAR FTE's, and 7.14 Bureau of Environmental Field Services FTE's. The remaining positions are paid for with 103, 105, and SGF funds.

The reporting of Title V and non-Title V funds and activities are reviewed by the KDHE on a quarterly basis in order to make any needed adjustments. By tracking the revenues, expenditures, and projections, the KDHE adjusts the per-ton yearly fee in order to meet the funding needs.

Section III

SUMMARY OF FINDINGS

KDHE is collecting sufficient fees, and accounting for the direct and indirect costs associated with administering the Title V program in conjunction with the Non-Title V activities.

January 17, 2003